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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 121009528-2729-02]

RIN 0648-XC287

2013-2014 Summer Flounder and Scup Specifications; 2013 Black Sea Bass Specifications;

Preliminary 2013 Quota Adjustments; 2013 Summer Flounder Quota for Delaware

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues final specifications for the 2013 summer flounder, scup, and black sea bass fisheries, as well as the 2014 summer flounder and scup fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries. This action prohibits federally permitted commercial fishing vessels from landing summer flounder in Delaware in 2013 due to continued quota repayment from previous years' overages.

These actions are necessary to comply with regulations implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, as well as to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act.

The intent of this action is to establish harvest levels and other management measures to ensure that these species are not overfished or subject to overfishing in 2013 and 2014.

DATES: Effective January 1, 2013, through December 31, 2014.

ADDRESSES: Copies of the specifications document, consisting of an Environmental

Assessment (EA), Initial Regulatory Flexibility Analysis (IRFA), and other supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and Scientific and Statistical Committee (SSC), are available from Dr. Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at <http://www.nero.noaa.gov>. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from John K. Bullard, Regional Administrator, Northeast Region, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2298.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, (978) 281-9224.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage the summer flounder, scup, and black sea bass fisheries under the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). Fishery specifications in these fisheries include various catch and landing subdivisions, such as the commercial and recreational sector annual catch limits (ACLs), annual catch targets (ACTs), sector-specific landing limits (i.e., the commercial fishery quota and recreational harvest limit (RHL)), and research set-aside (RSA) established for the upcoming fishing year. Details of each subdivision appear later in this rule.

The FMP and its implementing regulations establish the Council's process for

establishing specifications. All requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), including the 10 national standards, also apply to specifications.

The management units specified in the FMP include summer flounder (Paralichthys dentatus) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, scup (Stenotomus chrysops), and black sea bass (Centropristis striata) in U.S. waters of the Atlantic Ocean from 35° 13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Detailed background information regarding the status of the summer flounder, scup, and black sea bass stocks and the development of the 2013 and 2014 specifications for these fisheries was provided in the proposed specifications (77 FR 68723; November 16, 2012). That information is not repeated here.

NMFS will establish the 2013 recreational management measures (i.e., minimum fish size, possession limits, and fishing seasons) for summer flounder, scup, and black sea bass by publishing proposed and final rules in the Federal Register at a later date, after the Council concludes its deliberations and submits its recommendations as specified in the FMP.

2013 and 2014 Specifications

This final rule implements TAL, RSA, and RHL for each management unit for 2013 and 2014, consistent with the recommendations of the Council:

Summer Flounder: For 2013, a TAL of 19.07 million lb (8,650 mt), including RSA of 589,800 lb (267 mt); a commercial quota of 11.44 million lb (5,189 mt); and an RHL of 7.63 million lb (3,459 mt). For 2014, a TAL of 19.98 million lb (8,609 mt), including proposed RSA of 587,100 lb (266 mt); a commercial quota of 11.39 million lb (5,166 mt); and an RHL of 7.59

million lb (3,444 mt).

Scup: For 2013, a TAL of 31.08 million lb (14,098 mt), including RSA of 958,950 lb (435 mt); a commercial quota of 23.53 million lb (10,671 mt); and an RHL of 7.55 million lb (3,425 mt). For 2014, a TAL of 28.98 million lb (13,145 mt), including proposed RSA of 896,100 lb (406 mt); a commercial quota of 21.95 million lb (9,955 mt); and an RHL of 7.03 million lb (3,188 mt).

Black Sea Bass: For 2013, a TAL of 3.63 million lb (1,646 mt), including RSA of 111,900 lb (50.8 mt); a commercial quota of 1.78 million lb (805 mt); and an RHL of 1.85 million lb (838 mt).

Table 1. Summary of the 2013-2014 Specifications

		Summer Flounder		Scup		Black Sea Bass
		2013	2014	2013	2014	2013
ABC	million lb	22.34	22.24	38.71	35.99	4.50
	mt	10,133	10,088	17,557	16,325	2,041
Commercial ACL	million lb	12.11	12.05	30.19	28.07	2.13
	mt	5,491	5,467	13,694	12,734	966
Recreational ACL	million lb	10.23	10.19	8.52	7.92	2.37
	mt	4,642	4,621	3,863	3,592	1,075
Commercial ACT	million lb	12.11	12.05	30.19	28.07	2.13
	mt	5,491	5,467	13,694	12,734	966
Recreational ACT	million lb	10.23	10.19	8.52	7.92	2.37
	mt	4,642	4,621	3,863	3,592	1,075
Commercial Quota	million lb	11.44	11.39	23.53	21.95	1.78
	mt	5,189	5,166	10,671	9,955	805
RHL	million lb	7.63	7.59	7.55	7.03	1.85
	mt	3,459	3,444	3,425	3,188	838

Note: Commercial Quotas and RHLs include the 3-percent RSA reduction

Additional detail for each species' specifications is provided, as follows.

Summer Flounder

The summer flounder stock was declared rebuilt in 2011. The stock assessment update utilized to derive specification recommendations determined that summer flounder are not overfished and that overfishing did not occur in 2011, the most recent year of available data.

This stock assessment update did, however, indicate that biomass is currently lower than in recent years. As a result, the catch limits for 2013 and 2014 are slightly lower than in 2012.

The overfishing limit (OFL) for summer flounder for 2013 was estimated to be 29.81 million lb (13,523 mt). Based on this information, the 2013 ABC for summer flounder is 22.34 million lb (10,133 mt), and, using a strategy of a constant fishing mortality rate, that the 2014 ABC for summer flounder is 22.24 million lb (10,088 mt). Consistent with the summer flounder regulations, the sum of the recreational and commercial sector ACLs is equal to the ABC. ACL is an expression of total catch (i.e., landings and dead discarded fish) in each sector. To derive the ACLs, the sum of the sector-specific estimated discards is removed from the ABC to derive the landing allowance. The resulting landing allowance is apportioned to the commercial and recreational sectors by applying the FMP allocation criteria: 60 percent to the commercial fishery and 40 percent to the recreational fishery. Although the derived ACLs are not split exactly at 60/40, the landing portions of the ACLs preserve the 60/40 allocation split, consistent with the FMP. This process results in a commercial ACL for summer flounder of 12.11 million lb (5,491 mt) for 2013, and 12.05 million lb (5,467 mt) for 2014. The recreational ACLs are 10.23 million lb (4,642 mt) for 2013 and 10.19 million lb (4,621 mt) for 2014.

Consistent with the quota-setting procedures for the FMP, summer flounder overages are determined based upon landings for the period January-October 2012, plus any previously unaccounted for overages. Table 2 summarizes, for each state, the commercial summer flounder percent shares as outlined in § 600.100(d)(1)(I), the resultant 2013 commercial quotas (both initial and after deducting the RSA), the quota overages as described above, and the final adjusted 2013 commercial quotas, after deducting the RSA.

TABLE 2. FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2013

State	FMP Percent Share	Initial Quota (TAL)		Initial Quota, less RSA		2012 Quota Overages (through 10/31/12)		Adjusted Quota, less RSA	
		lb	kg	lb	kg	lb	kg	lb	kg
ME	0.04756	5,609	2,544	5,441	2,468	0	0	5,441	2,468
NH	0.00046	54	25	53	24	0	0	53	24
MA	6.82046	804,377	364,866	780,246	353,920	0	0	780,246	353,920
RI	15.68298	1,849,587	838,973	1,794,100	813,804	0	0	1,794,100	813,804
CT	2.25708	266,191	120,744	258,205	117,122	0	0	258,205	117,122
NY	7.64699	901,855	409,081	874,799	396,809	32,194	14,603	842,605	382,206
NJ	16.72499	1,972,478	894,716	1,913,303	867,874	0	0	1,913,303	867,874
DE	0.01779	2,098	952	2,035	923	53,489	24,263	-51,454	-23,340
MD	2.03910	240,483	109,083	233,269	105,811	0	0	233,269	105,811
VA	21.31676	2,514,012	1,140,356	2,438,592	1,106,145	0	0	2,438,592	1,106,145
NC	27.44584	3,236,851	1,468,236	3,139,746	1,424,189	0	0	3,139,746	1,424,189
Total	100.00	11,793,596	5,349,575	11,439,789	5,189,088	85,683	38,866	11,405,560	5,173,562

Notes: 2012 quota overage is determined by comparing landings for January through October 2012, plus any landings in 2011 in excess of the 2011 quota (that were not previously addressed in the 2012 specifications) for each state. For Delaware, this includes continued repayment of overharvest from previous years. Total quota is the sum for all states with an allocation. A state with a negative number has a 2013 allocation of zero (0). Kilograms are as converted from pounds and may not necessarily add due to rounding.

Table 3 presents the initial allocations of summer flounder for 2014, by state, with and without the commercial portion of the RSA deduction. These state quota allocations for 2014 are preliminary and are subject to change if there are overages of states' quotas carried over from a previous fishing year, as well as any adjustments needed after the 2014 RSA projects are awarded. The final commercial quota allocations will be announced in a Federal Register notice prior to the start of the 2014 fishing year.

Table 3. 2014 Preliminary Summer Flounder State Commercial Quotas

State	Percent Share	Initial Commercial Quota		Commercial Quota less RSA ¹	
		lb	kg ²	lb	kg ²
ME	0.04756	5,579	2,533	5,417	2,457
NH	0.00046	54	24	52	24
MA	6.82046	800,091	363,242	776,788	352,345
RI	15.68298	1,839,732	835,240	1,786,147	810,183
CT	2.25708	264,772	120,207	257,061	116,601
NY	7.64699	897,050	407,261	870,922	395,044
NJ	16.72499	1,961,967	890,735	1,904,823	864,013
DE	0.01779	2,087	947	2,026	919
MD	2.03910	239,202	108,598	232,235	105,340
VA	21.31676	2,500,616	1,135,282	2,427,783	1,101,224
NC	27.44584	3,219,604	1,461,703	3,125,829	1,417,852
Total ³	100.00001	11,730,754	5,326,000	11,389,082	5,166,000

1 Preliminary Research Set-Aside amount is 587,100 lb (266 mt).

2 Kilograms are as converted from pounds and do not sum to the converted total due to rounding.

3 Rounding of quotas results in totals exceeding 100 percent.

Delaware Summer Flounder Closure

Table 2 shows that, for Delaware, the amount of overharvest from previous years is greater than the amount of commercial quota allocated to Delaware for 2013. As a result, there is no quota available for 2013 in Delaware. The regulations at § 648.4(b) provide that Federal permit holders, as a condition of their permit, must not land summer flounder in any state that the Administrator, Northeast Region, NMFS, has determined no longer has commercial quota available for harvest. Therefore, effective January 1, 2013, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder permits are prohibited for the

2013 calendar year, unless additional quota becomes available through a quota transfer and is announced in the Federal Register. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the 2013 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

Scup

The OFL for scup is 47.80 million lb (21,680 mt). Using the appropriate control rule and applying the Council's risk policy, the ABC for scup is 38.71 million lb (17,557 mt) for 2013, and, using a constant fishing mortality rate of 0.142, the 2014 ABC is 35.99 million lb (16,325 mt). Similar to summer flounder, the stock assessment update upon which the specifications are based indicates that scup biomass is currently lower than in recent years. Therefore, the 2013 and 2014 catch limits are slightly lower than in 2012, but are still relatively high compared to recent landings.

The scup management measures specify that the ABC is equal to the sum of the commercial and recreational sector ACLs. The ACTs (both commercial and recreational) are equal to the respective ACL for 2013-2014. Therefore, commercial sector ACLs/ACTs are 30.19 million lb (13,694 mt) for 2013, and 28.07 million lb (12,734 mt) for 2014. The recreational sector ACLs/ACTs are 8.52 million lb (3,863 mt) and 7.92 million lb (3,592 mt) for 2013 and 2014, respectively.

After deducting 958,950 lb (435 mt) from the ACL for 2013 RSA, the scup commercial quota is reduced to 23.53 million lb (10,671 mt), with an RHL of 7.55 million lb (3,425 mt). Using the preliminary 2014 RSA amount of 3 percent, the scup commercial for 2014 is 21.95 million lb (9,955 mt), and the RHLs is 7.03 million lb (3,188 mt). The quota allocations for 2014 are preliminary and are subject to reductions if there are overages that occur in the 2013 fishing year, as well as any adjustments needed after the 2014 RSA projects are awarded. Any

necessary quota adjustments will be included in a Federal Register notice prior to the start of the 2014 fishing year.

Table 4: Scup Specifications

Year		ABC	Commercial ACL	Recreational ACL	Comm. ACT	Rec. ACT	Comm. Quota	RHL
2012	million lb	40.88	31.89	8.99	31.89	8.99	27.91	8.45
	mt	18,543	14,464	4,079	14,464	4,079	12,659	3,831
2013	million lb	38.71	30.19	8.52	30.19	8.52	23.53	7.55
	mt	16,325	13,694	3,863	13,694	3,863	10,671	3,425
2014	million lb	35.99	28.07	7.92	28.07	7.92	21.95	7.03
	mt	16,325	12,734	3,592	12,734	3,592	9,955	3,188

Note: Commercial Quotas and RHLs include the 3-percent RSA reduction

The scup commercial quota is divided into three commercial fishery quota periods. Consistent with the quota setting procedures established for the FMP, scup overages are determined based upon landings for the Winter I and Summer 2012 periods, plus any previously unaccounted for overages. There are no previous commercial overages applicable to the 2013 scup commercial quota; therefore, no adjustment to the 2013 scup specifications is required in this final rule. Any overage of the 2012 Winter II period will be addressed in July 2013, prior to the start of the 2013 Winter II fishery. The period quotas, after deducting for RSA, are detailed in Tables 5 and 6. Unused Winter I quota may be carried over for use in the Winter II period.

Per the quota accounting procedures in the FMP, after June 30, 2013, NMFS will compile all available landings data for the 2012 Winter II quota period and compare the landings to the 2012 Winter II quota period allocation, inclusive of any transfer from the 2012 Winter I quota period. Any overages will be determined, and deductions, if needed, will be made to the Winter II 2013 allocation and published in the Federal Register. Table 5 contains the quota period allocations for the 2013 commercial scup fishery.

Table 5. Commercial scup quota allocations for 2013 by quota period

		Initial Quota		Initial Quota less Overages (through 10/31/2012)		Adjusted Quota less Overages and RSA		Federal Possession Limits (Per Trip)	
Quota Period	Percent Share	lb	mt	lb	mt	lb	mt	lb	kg
Winter I	45.11	10,940,583	4,963	N/A	N/A	10,613,157	4,814	50,000	22,680
Summer	38.95	9,446,591	4,285	N/A	N/A	9,163,877	4,156	N/A	N/A
Winter II	15.94	3,865,948	1,754	N/A	N/A	3,750,249	1,701	2,000	907
Total	100.0	24,253,122	11,001	N/A	N/A	23,527,283	10,671	N/A	N/A

Notes: The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notification in the Federal Register.

Metric tons are as converted from pounds and may not necessarily total due to rounding.

N/A=Not applicable.

Table 6 presents the allocations for 2014, by period, with and without the commercial portion of the RSA deduction. These period allocations for 2014 are preliminary and are subject to change if there are overages in the 2013 fishing year, as well as any adjustments needed after the 2013 RSA projects are awarded. Any commercial quota adjustments from 2013 will be announced in a Federal Register notice prior to the start of the 2014 fishing year.

Table 6. Preliminary commercial scup quota allocations for 2014 by quota period

		Initial Quota		Initial Quota less Overages (through 10/31/2012)		Adjusted Quota less Overages and RSA		Federal Possession Limits (Per Trip)	
Quota Period	Percent Share	lb	mt	lb	mt	lb	mt	lb	kg
Winter I	45.11	10,206,495	4,630	N/A	N/A	9,900,300	4,491	50,000	22,680
Summer	38.95	8,812,746	3,997	N/A	N/A	8,548,364	3,877	N/A	N/A
Winter II	15.94	3,606,551	1,636	N/A	N/A	3,498,355	1,587	2,000	907
Total	100.0	22,625,792	10,263	N/A	N/A	21,947,018	9,955	N/A	N/A

Notes: The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notification in the Federal Register.

Metric tons are as converted from pounds and may not necessarily add due to rounding.

N/A=Not applicable.

Consistent with the unused Winter I commercial scup quota rollover provisions at § 648.120(a)(3), this final rule maintains the Winter II possession limit-to-rollover amount ratios

that have been in place since the 2007 fishing year, as shown in Table 7. The Winter II possession limit will increase by 1,500 lb (680 kg) for each 500,000 lb (227 mt) of unused Winter I period quota transferred, up to a maximum possession limit of 8,000 lb (3,629 kg).

Table 7. Potential increase in Winter II possession limits based on the amount of scup rolled over from Winter I to Winter II period

Initial Winter II Possession Limit		Rollover from Winter I to Winter II		Increase in Initial Winter II Possession Limit		Final Winter II Possession Limit after Rollover from Winter I to Winter II	
lb	kg	lb	mt	lb	kg	lb	kg
2,000	907	0-499,999	0-227	0	0	2,000	907
2,000	907	500,000-999,999	227-454	1,500	680	3,500	1,588
2,000	907	1,000,000-1,499,999	454-680	3,000	1,361	5,000	2,268
2,000	907	1,500,000-1,999,999	680-907	4,500	2,041	6,500	2,948
2,000	907	2,000,000-2,500,000	907-1,134	6,000	2,722	8,000	3,629

Black Sea Bass

The SSC rejected the OFL estimate provided from the most recent black sea bass stock assessment, stating that it was highly uncertain and not sufficiently reliable to use as the basis for management advice. Therefore, the 2013 ABC for black sea bass is the status quo ABC of 4.50 million lb (2,041 mt), and the 2013 ACTs (both commercial and recreational) are equal to the respective ACLs.

The 2013 black sea bass commercial ACL and ACT is 2.13 million lb (966 mt), and the recreational ACL and ACT is 2.37 million lb (1,075 mt). After removing discards and RSA of 111,900 lb (50.8 mt), the commercial quota is 1.78 million lb (805 mt) and the RHL is 1.85 million lb (838 mt). While the ABC is the same as 2012, the ACLs/ACTs and quotas are different from 2012 because the updated discard estimate is higher than the previous year. Recent data indicate that the 2012 recreational black sea bass ACL has been exceeded by a significant amount. The regulations require that we deduct the amount of landings that exceeded the RHL from a single subsequent year's ACT as soon as possible. However, NMFS has determined that because the data are preliminary and will not be finalized until April 2013, any

deduction necessary to account for the overage will be applied to the fishing year 2014 RHL.

Consistent with the quota-setting procedures for the FMP, commercial black sea bass overages are determined based upon landings for the period January-October 2012, plus any previously unaccounted for landings. Table 8 details the specifications for the black sea bass fishery.

Table 8. Black Sea Bass 2013 Specifications

Year		ABC	Commercial ACL	Recreational ACL	Comm. ACT	Rec. ACT	Comm. Quota	RHL
2012	million lb	4.50	1.98	2.52	1.98	1.86	1.71	1.32
	mt	2,041	898	1,143	898	844	774	598
2013	million lb	4.50	2.13	2.37	2.13	2.37	1.78	1.85
	mt	2,041	966	1,075	966	1075	805	838

Comments and Responses

NMFS received three comments during the 15-day comment period for the November 16, 2012, proposed rule (77 FR 68723).

Comment 1: One commenter suggested that the quotas should be reduced by 50 percent, that RSA was unnecessary, and that the summer flounder stock is not actually rebuilt.

Response: NMFS disagrees. In accordance with the Magnuson-Stevens Act, the quotas established through this final rule and the 2011 determination that summer flounder has been rebuilt are based on the best available science. The quotas were recommended by the Council's SSC, and the summer flounder stock assessment underwent a rigorous peer review through the Northeast Fisheries Science Center's Stock Assessment Workshop review process. The RSA program continues to provide a mechanism to fund research and compensate vessel owners through the sale of fish harvested under the research quota. This program provides valuable scientific information and fosters cooperative research throughout the Northeast Region.

Comment 2: One comment addressed the 2012 in-season "emergency" closure of the

recreational black sea bass fishery. The commenter was concerned that the recreational industry would not be able to economically “wait a few years” to access more of the black sea bass stock.

Response: The 2012 in-season closure of the recreational black sea bass fishery was a non-discretionary requirement of the black sea bass regulations, and was not an emergency rule. The recreational measures for 2013 will be published in a subsequent rule in late spring 2013. The RHL established through this rule is based on the best available science, consistent with the recommendation of the Council’s SSC.

Comment 3: Another commenter expressed concern about the number of people affected by the 2012 in-season closure of the recreational black sea bass fishery.

Response: The 2012 in-season closure of the recreational black sea bass fishery was a non-discretionary requirement of the black sea bass regulations, and the closure at issue in the comment will expire before this final rule is effective. The recreational measures for 2013 will be published in a subsequent rule in late spring 2013. The RHL established through this rule is based on the best available science, consistent with the recommendation of the Council’s SSC. NMFS understands that the 2012 in-season closure may have impacted the recreational fishery, but, as noted, NMFS had no discretion but to close the fishery in order to protect both the black sea bass species as well as preserve the fishery for future harvests.

Changes from the Proposed to Final Specifications Rule

Other than to specify the final summer flounder state allocations after accounting for prior overages and the RSA allocation, no other changes were made from the proposed rule.

Classification

The Administrator, Northeast Region, NMFS, determined that this final rule is necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule, to ensure that the final specifications are in place on January 1, 2013. This action establishes specifications (i.e., annual quotas) for the summer flounder, scup, and black sea bass fisheries.

This rule is being issued at the earliest possible date. Preparation of the proposed rule was dependent on the submission of the EA/IRFA in support of the specifications that is developed by the Council. This document was received by NMFS in early October 2012. Documentation in support of the Council's recommended specifications is required for NMFS to provide the public with information from the environmental and economic analyses as required in rulemaking. The proposed rule published on November 16, 2012, with a comment period ending December 3, 2012. Publication of the adjusted summer flounder quota at the start of the fishing year that begins January 1, 2013, is required by the order of Judge Robert Doumar in North Carolina Fisheries Association v. Daley.

However, if the 30-day delay in effectiveness is not waived, there will be no quota specifications for the affected fisheries on January 1, 2013, which would significantly confuse the public and the complex cooperative management regime governing these fisheries. The summer flounder, scup, and black sea bass fisheries are all expected, based on historic participation and harvest patterns, to be very active at the start of the fishing season in 2013. Without these specifications in place on January 1, 2013, individual states will be unable to set commercial possession and/or trip limits, which apportion the catch over the entirety of the calendar year. NMFS will be unable to control harvest in any way, as there will be no quotas in place for any of the three species until the regulations are effective. NMFS will be unable to control harvest or close the fishery, should landings exceed the quotas. Moreover, the Delaware summer flounder fishery would be open for fishing, but in a negative quota situation. All of

these factors would result in a race for fish, wherein uncontrolled landings could occur. Disproportionately large harvest occurring within the first weeks of 2013 could have distributional effects on other quota periods, and would disadvantage some gear sectors or owners and operators of smaller vessels that typically fish later in the fishing season. There is no historic precedent by which to gauge the magnitude of harvest that might occur, should quotas for these three species not be in place during the first weeks of 2013. It is reasonable to conclude that the commercial fishing fleet possesses sufficient capacity to exceed the established quotas for these three species before the regulations would become effective, should quotas not be in place on January 1, 2013. Should this occur, the fishing mortality objectives for all three species could be compromised.

For these reasons, the 30-day delay in effectiveness is contrary to the public interest, and NMFS is waiving the requirement.

These specifications are exempt from the procedures of E.O. 12866 because this action contains no implementing regulations.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

A FRFA was prepared pursuant to 5 U.S.C. 604(a), and incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/IRFA is available from the Council (see ADDRESSES).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and

legal basis for this final rule, is contained in the preambles to the proposed rule and this final rule and is not repeated here.

Summary of Significant Issues Raised in Public Comments

No changes to the proposed rule were required to be made as a result of public comments. None of the comments received raised specific issues regarding the economic analyses summarized in the IRFA or the economic impacts of the rule more generally. For a summary of the comments received, and the responses thereto, refer to the “Comments and Responses” section of this preamble.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal commercial or charter/party permit for summer flounder, scup, or black sea bass, as well as owners of vessels that fish for any of these species in state waters. Under the Small Business Administration’s regulations implementing the Regulatory Flexibility Act, these vessels are considered “small entities” if their revenues are less than \$4 million per year. The Council estimates that the proposed 2013-2014 specifications could affect 2,039 vessels that held a Federal summer flounder, scup, and/or black sea bass permit in 2011 (the most recent year of complete permit data). However, the more immediate impact of this rule will likely be realized by the 870 vessels that actively participated in these fisheries (i.e., landed these species) in 2011.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

Specification of commercial quotas and possession limits is constrained by the

conservation objectives set forth in the FMP and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Act. Economic impacts of changes in year-to-year quota specifications may be offset by adjustments to such measures as commercial fish sizes, changes to mesh sizes, gear restrictions, or possession and trip limits that may increase efficiency or value of the fishery. For 2013 and 2014, no such adjustments were recommended by the Council; therefore, this final rule contains no such measures. Therefore, the economic impact analysis of the action is evaluated solely on the different levels of quota specified in the alternatives. The ability of NMFS to minimize economic impacts for this action is constrained to approving quota levels that provide the maximum availability of fish while still ensuring that the required objectives and directives of the FMP, its implementing regulations, and the Magnuson-Stevens Act are met. In particular, the Council's SSC has made recommendations for the 2013-2014 ABC level for all three stocks. NMFS considers these recommendations to be consistent with National Standard 2. Establishing catch levels higher than the SSC ABC recommendations is not permitted under the Magnuson-Stevens Act.

The economic analysis for the 2013-2014 specification assessed the impacts for quota alternatives that achieve the aforementioned objectives. The no action alternative, wherein no quotas are established for 2013 or 2014, was excluded from analysis because it is not consistent with the goals and objectives of the FMP and the Magnuson-Stevens Act. Implementation of the no action alternative in 2013 or 2014 would substantially complicate the approved management programs for these three species. NMFS is required under the FMP's implementing regulations to implement specifications for these fisheries on an annual basis, and for up to 3 years. The no action alternative would result in no fishing limits for 2013 or 2014, and could result in overfishing of the resources and substantially compromise the mortality and/or stock rebuilding

objectives for each species, contrary to laws and regulations.

The Council analyzed three sets of combined catch limit alternatives for the 2013-2014 summer flounder, scup, and black sea bass fisheries. Of these, one alternative, labeled Alternative 3 for each species, contained the most restrictive options (i.e., lowest total landing levels). While the Alternative 3 measures would achieve the objectives of the proposed action for each of three species, they have the highest potential adverse economic impacts on small entities in the form of potential foregone fishing opportunities. Alternative 3 was not preferred by the Council because the other alternatives considered are expected have lower adverse impacts on small entities while achieving the stated objectives of sustaining the summer flounder, scup, and black sea bass stocks, consistent with the FMP and Magnuson-Stevens Act.

Through this final rule, NMFS implements the Council's preferred ABCs in 2013 for summer flounder (22.34 million lb (10,133 mt)), scup (38.71 million lb (17,577 mt)), and black sea bass (4.5 million lb (2,041 mt)). This final rule also implements the following ABCs for 2014: Summer flounder, 22.24 million lb (10,088 mt); and scup, 35.99 million lb (16,325 mt). This alternative consists of the quota levels that pair the lowest economic impacts to small entities and meet the required objectives of the FMP and the Magnuson-Stevens Act. The respective specifications contained in this final rule for all three species were selected because they satisfy NMFS' obligation to implement specifications that are consistent with the goals, objectives, and requirements of the FMP, its implementing regulations, and the Magnuson-Stevens Act. The F rates associated with the catch limits for all three species all have very low likelihoods of causing overfishing to occur in 2013.

The revenue decreases associated with allocating a portion of available catch to the RSA program are expected to be minimal (approximately between \$300 and \$1,000 per vessel), and

are expected to yield important benefits associated with improved fisheries data. It should also be noted that fish harvested under the RSA program can be sold, and the profits used to offset the costs of research. As such, total gross revenues to the industry are not expected to decrease substantially, if at all, as a result of this final rule authorizing RSA for 2013 and 2014.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see ADDRESSES) and at the following website: <http://www.nero.noaa.gov>.

Authority: 16 U.S.C. 1801 et seq.

Dated: December 26, 2012.

Alan D. Risenhoover, Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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